

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA . CASE NO.
V. . ELIZABETH CITY, NC
 . OCTOBER 22, 2015
 . 5:15-CR-147-FL1
JOSEPH MOORE .
.

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

APPEARANCES:

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1 **THE COURT:** You're Joseph Moore?

2 **MR. MOORE:** Yes, sir.

3 **THE COURT:** Do you want to say anything about your sentence
4 or your case?

5 **MR. MOORE:** Yes, sir.

6 **THE COURT:** Go ahead.

7 **MR. MOORE:** I've been charged with lying to federal agents
8 about lying about international and domestic terrorism, and
9 for that I am absolutely responsible and accept full
10 responsibility for that action. Whenever I first become a
11 Muslim back in February of 2013 and come back to Raleigh,
12 the first Muslims that I had met were a Muslim who was
13 talking about leaving to go overseas and a Muslim who was
14 obsessed with Syria. And these were the first people that
15 I was exposed to upon becoming Muslim. But with time and
16 exposure to the community and learning the truth about
17 Islam, I distanced myself from them and their ideology, but
18 the mistakes of being a part of such bad company and not
19 being forthright with federal agents whenever they asked me
20 about said company is the consequences that I am dealing
21 with today. And for that I, you know, am eternally
22 remorseful and apologetic, and I'll have to deal with this
23 for the rest of my life as a convicted felon, being
24 stripped of rights and having to carry this moniker with me
25 into every job interview and into every college application

1 going forth. And this doesn't take away from the mistake
2 that I made, but, you know, in the time away from them, not
3 as a result of fear of going to prison, once I was able to
4 talk to my attorney and sit with federal agents again they
5 found me to be forthright and beyond that helpful. Because
6 I was born in America and, you know, when it comes to
7 national safety and things like this, it's not just my
8 concern as an American citizen but also as a Muslim and as
9 a human being to make sure that people are safe. And I
10 expressed to federal agents that if I could be helpful in
11 any way, shape, form or fashion with anything that I did
12 know that I would be more than willing to help deter any
13 type of radicalism or extremism in the community. As
14 someone who volunteers and teaches and works with tens of
15 dozens of youth every weekend for the past year and a half,
16 I have sought to teach them against radicalism, against
17 extremism in their religion. And all these character
18 letters and things like that, I hope you were able to look
19 at, you know, would have shown you the character that I
20 have grown into with time. And I know that it's a long
21 shot and that the odds are stacked against me, but I would
22 hope that at your discretion upon looking at all these
23 evidences that you would see that it would be more
24 beneficial to the community to have me around. Obviously
25 I've planned my future. I wanted to be married next

1 summer, I wanted to finish up at Wake Tech this semester
2 and continue into higher education at a major university,
3 but obviously all these things would be deterred if I was
4 put in prison. I don't have a history of violence or
5 anything like that, and I would not act out against the
6 government or anything to that effect. And I would hope
7 that at your discretion that you would find in your heart,
8 even if it was the maximum, to simply forego imprisoning me
9 and put me on probation so that I can continue in the
10 service that I have been a part of and that has made me a
11 better human being.

12 **THE COURT:** Thank you. Mr. McCoppin, his guideline report
13 establishes an offense level of 23, criminal history
14 category 1, do you have any objections to that?

15 **MR. McCOPPIN:** No. That's calculated correctly.

16 **THE COURT:** So that's a guideline range of 46 to 57 months?

17 **MR. McCOPPIN:** It is.

18 **THE COURT:** Do you want to speak about his sentence?

19 **MR. McCOPPIN:** I do, if I may. Your Honor, I previously
20 forwarded to Judge Flanagan well over a dozen letters of
21 recommendation.

22 **THE COURT:** You sent those to Judge Flanagan?

23 **MR. McCOPPIN:** I did, and I checked with your clerk earlier
24 this week to make sure you have them. I have the hard
25 copies here if you would like. They were filed a week in

1 advance as per the rules.

2 **THE COURT:** We've got them. Let me take a look at them for
3 a minute.

4 **MR. McCOPPIN:** Yes, Your Honor.

5 **THE COURT:** Where is the terrorism? Is it internal in
6 places like Syria and Lebanon and Iraq, or is it external.
7 Is it terrorism that's directed at the United States. I
8 don't get it. And I'm not trying to be facetious at all.
9 I'm trying to be extremely pointed in trying to figure this
10 out. Like if these guys wanted to go to a Middle Eastern
11 country in order to do something in that country, but it's
12 not directed at the United States, is that terrorism under
13 American law?

14 **MR. McCOPPIN:** I understand that it is, yes. Promoting
15 terrorism outside the United States.

16 **THE COURT:** Not directed against the United States?

17 **MR. McCOPPIN:** I believe the statute refers to any foreign
18 government as part of the element. If the Government would
19 like to --

20 **THE COURT:** Well, I don't want them to talk right now.

21 **MR. McCOPPIN:** I understand. I can give you some more
22 information, as I understand it, if you would like.

23 **THE COURT:** I mean the people in Ceylon which has a new
24 name, Sri Lanka, maybe. Who knew? The Tamiles; is that
25 what they are? Who knows? Do you know?

1 **MR. McCOPPIN:** I don't.

2 **THE COURT:** No. They're chopping each other up on a
3 regular basis for decades leading into centuries leading
4 into millennia, and do we care about that, I mean, in the
5 United States? Is that a burden of federal law? And then
6 transpose it to Syria, which if you're a little older and
7 pay attention to history it used to be the UAR, United Arab
8 Republic. And it was Egypt and Jordan and Syria, I
9 believe, when Nasser was the strong man. You don't
10 remember any of this?

11 **MR. McCOPPIN:** Only from studying history.

12 **THE COURT:** And now it's Syria.

13 **MR. McCOPPIN:** And the British left and it kind of divided
14 up.

15 **THE COURT:** And then Syria had a government or has a
16 government or doesn't have a government, and there are an
17 assortment of people who are trying to kill each other
18 there in order to claim sovereignty over that. And so is
19 that what these two guys were into?

20 **MR. McCOPPIN:** As I understand it, both of them had been
21 making plans to travel to Syria to actively participate in
22 creating what they saw as a Muslim homeland.

23 **THE COURT:** Well, it's a Muslim homeland now.

24 **MR. McCOPPIN:** Well, I guess it depends on how you define
25 it. Perhaps very true to the Qur'an interpretation of

1 their religion.

2 **THE COURT:** And is that directed as terrorism against the
3 United States?

4 **MR. McCOPPIN:** Well, it's directed against the government
5 of Syria, which as I understand it likely provides for
6 jurisdiction.

7 **THE COURT:** It does what?

8 **MR. McCOPPIN:** As I understand it, if you are going to
9 create -- if you are supposedly going to promote terrorism,
10 provide material support to a terrorist organization -- a
11 terrorist organization as I understand it from the case law
12 doesn't have to be directed at the United States. If
13 there's a terrorist organization targeting another
14 government --

15 **THE COURT:** So the Assad government is the target? But I
16 thought Assad and Putin were just in Russia entering into a
17 pact.

18 **MR. McCOPPIN:** And against the United States and Turkey in
19 large part, yes.

20 **THE COURT:** Uh-huh. My enemy's enemy kind of thing?

21 **MR. McCOPPIN:** It depends on the day.

22 **THE COURT:** And so this fellow here didn't tell the truth
23 about the purported intentions of the other two guys?

24 **MR. McCOPPIN:** Correct. The day before the other two
25 individuals were arrested by federal agents, federal agents

1 came to Mr. Moore here, and they asked him some questions.
2 As I understand it --

3 **THE COURT:** And he was untruthful in his answers?

4 **MR. McCOPPIN:** He was. Mr. Moore didn't fabricate a lie,
5 but when asked specific questions, did he see them with
6 guns or weapons, he said no.

7 **THE COURT:** Okay.

8 **MR. McCOPPIN:** So it's clearly a lie, but he didn't make up
9 a story. And there was a second question about did Mr.
10 Moore know anything about these other two people planning
11 to go overseas and fight to establish a Muslim homeland.
12 And again he said, no, which was clearly a lie, and those
13 two statements are the reason we are here today.

14 **THE COURT:** That's the gravamen of the charge against him?

15 **MR. McCOPPIN:** It is.

16 **THE COURT:** Okay. All right. Anything else?

17 **MR. McCOPPIN:** Yes. If I could take just a few minutes and
18 give you a little bit of background.

19 Mr. Moore is a young man. He grew up and lived in a
20 home with his mother and his brother. When he finished the
21 ninth grade in Kentucky they moved to the Raleigh area. He
22 was very astute in religious study even as a high schooler.

23 **THE COURT:** What religion -- what faith was he?

24 **MR. McCOPPIN:** He was Christian.

25 **THE COURT:** Was he raised in a particular denomination?

1 **MR. McCOPPIN:** Seventh Day Adventist, Christian.

2 **THE COURT:** Okay.

3 **MR. McCOPPIN:** And his mother is here and she still is a
4 member of that church.

5 **THE COURT:** So he was born into a Seventh Day Adventist
6 family, or not?

7 **MR. McCOPPIN:** I believe so, yes.

8 **MR. MOORE:** I was born in a household that believed in God
9 and the Bible. And later as I got older and studied the
10 Bible I became a youth minister for a Seventh Day Adventist
11 church, which later sponsored me to go to a Christian
12 seminary school, Mount Pisgah Academy. And that's what
13 actually caused me to move from Kentucky to North Carolina.

14 **THE COURT:** So you were the only member of the Seventh Day
15 Adventist religion in your family?

16 **MR. MOORE:** My mother, she was assigned in Iraq.

17 **THE COURT:** Where?

18 **MR. MOORE:** She was in Iraq.

19 **THE COURT:** Doing what?

20 **MR. MOORE:** She was a part of the military. She was with
21 the --

22 **MR. McCOPPIN:** The U.S. military?

23 **MR. MOORE:** Yes. She was with the 91st Infantry group out
24 of Fort Campbell.

25 **THE COURT:** An active duty member of the Armed Forces?

1 **MR. MOORE:** Yes, sir.

2 **THE COURT:** Your mother?

3 **MR. MOORE:** Yes, sir. When she came back upon seeing how I
4 was involved in the church she actually became a part of
5 the church.

6 **THE COURT:** Of the Seventh Day Adventist Church?

7 **MR. MOORE:** Yes.

8 **THE COURT:** So at birth your family had some affinity for
9 Christianity.

10 **MR. MOORE:** Yes, sir.

11 **THE COURT:** And later you became denominational in the
12 Seventh Day Adventist Church.

13 **MR. MOORE:** Yes, sir.

14 **THE COURT:** And then later in your maturity or your
15 development you became a believer of Islam?

16 **MR. MOORE:** Yes, sir. I had gone to seminary school, I had
17 read the Bible 13 times cover to cover in seven different
18 versions. And I talked to a friend of mine who had become
19 a Muslim, and it just answered some questions that I never
20 had, so I kind of considered it being like a true religion
21 sort of, I guess.

22 **THE COURT:** Okay. Thank you.

23 **MR. McCOPPIN:** So his local congregation sponsored his
24 tuition to go to the high school seminary where he stayed
25 for awhile. He was doing fine there, but moved back home

1 because he didn't like being away from his mother and the
2 family. He graduated from Millbrook in Raleigh. He has
3 had several jobs, as the pre-sentence report indicates,
4 continuous employment. There's a small break of getting
5 workers' comp injury from moving boxes in some sort of
6 shipping warehouse. But he has had employment, he has no
7 criminal history. You've seen the letters, and he's
8 written a two-page, single spaced acceptance of
9 responsibility statement that's included in the record.

10 So the question is what do we do with this man. Who
11 has come here to stand up for Mr. Moore.

12 (Several people stand)

13 **THE COURT:** Okay.

14 **MR. McCOPPIN:** Thank you. Your Honor, there would have
15 been more, but we changed the sentencing day and time from
16 yesterday until today, so some people couldn't adjust their
17 schedule.

18 I double-checked with probation. A 1001 violation
19 starts at an offense level six. If it's a case that
20 involves some --

21 **THE COURT:** Is that what this is, a 1001 violation?

22 **MR. McCOPPIN:** It is.

23 **THE COURT:** An untrue statement to a federal official?

24 **MR. McCOPPIN:** That's all it can be. That's what it is,
25 and it is serious, but in the -- relatively speaking I

1 would suggest that it may fall on the less serious side of
2 offenses that you see here on a regular basis.

3 So we start off with what would be an offense level
4 six.

5 **THE COURT:** It's not a sworn statement. It's just
6 material.

7 **MR. McCOPPIN:** That's correct. What I understand happened
8 here is law enforcement, federal agents, came to Mr. Moore,
9 identified themselves, we're federal agents. We want to
10 talk to you.

11 **THE COURT:** And materiality is still a question of law?

12 **McCOPPIN:** Well, it's a question of fact. I would believe
13 the jury would have to decide it at trial.

14 **THE COURT:** If you were in a jury trial involving 1001,
15 does the jury -- I think maybe now they do, but at one time
16 they didn't -- whether the content of the statement was
17 material or not was an issue for the judge and whether you
18 said it was an issue for the jury.

19 **MR. McCOPPIN:** I am not qualified to answer that,
20 basically.

21 **THE COURT:** No big deal.

22 **MR. McCOPPIN:** But what we have here is him answering
23 falsely. After he had made those statements --

24 **THE COURT:** Well, you can give them a false statement. You
25 just can't give them a materially false statement.

1 **MR. McCOPPIN:** Correct.

2 **THE COURT:** You know, if they say to you, good morning, I'm
3 Agent Special from the FBI and here's my coat and look on
4 the back of it, it says FBI. How old are you? I'm 59.
5 You're 59. Okay. I'll write that down. And actually
6 you're 58. That's immaterial unless you're trying to get a
7 benefit at the age of 59.

8 **MR. McCOPPIN:** All true.

9 **THE COURT:** Even if you know it's false, even if you're
10 lying about your age.

11 **MR. McCOPPIN:** Correct. Materiality is an element of the
12 offense.

13 **THE COURT:** And materiality means important.

14 **MR. McCOPPIN:** Yes.

15 **THE COURT:** Critical. Something upon which people rely.

16 **MR. McCOPPIN:** Yes. The circumstances of this case make
17 this defendant's material false statement irrelevant to the
18 case. And the reason we know that is the very day after he
19 made these false statements the Government charged those
20 other two people with attempting to provide material
21 support. There was no delay caused by Mr. Moore's false
22 statement that delayed the Government proceeding. They had
23 a person embedded in that group that included those other
24 two people who had been making tape recordings and filing
25 reports with the government that led to the arrest of those

1 other two people. So the statements by Mr. Moore insofar
2 as affecting the government's case against the other two
3 people is irrelevant in their proceeding against them and
4 ultimately getting guilty pleas. So I would agree that his
5 false statements were material to the prosecution of those
6 other cases but were largely irrelevant because they
7 already had tape recordings, eye witness accounts by the
8 agent, and ultimately their confessions now.

9 So what we have here is we go from six points to 14
10 points in the guidelines because it involves issues related
11 to international terrorism. And since it relates to
12 international terrorism, then there's another 12 point
13 enhancement that goes on top of the 14. So we go from what
14 would have arguably been a level six offense for a 1001
15 violation all the way up to a 26 minus three for acceptance
16 of responsibility.

17 Mr. Moore's history and the letters that you have
18 before you all talk about public work for the community,
19 his Muslim faith, teaching young people that well predates
20 the Government coming to him and telling him that he's a
21 target. And I present that to you to remind you of the
22 sincerity of his conviction. He has finished the course
23 work and the training that qualifies him to be -- what I
24 would consider to be a preacher in the Muslim faith. All
25 he has to do is finish some sort of ceremony that was to be

1 conducted I think this weekend, correct?

2 **MR. MOORE:** I have been studying under one of the top
3 teachers that comes to our community and for like, you
4 know, the education of Islam. He gives out a certification
5 that says you are qualified to speak on certain matters of
6 the religion, whether it be like our belief or how we come
7 to the understanding of like different rulings and things
8 like this. And he's coming the last weekend of the month,
9 and I was supposed to, God willing, get the qualifications
10 from him then, so that I can further use that as a part of
11 educating the youth in the community at large.

12 **MR. McCOPPIN:** So what it allows him to do is lead prayer
13 at the mosque and to speak to the congregation. I'm not
14 sure it is as high as to be ordained as someone in the
15 Christian faith might understand it to be. But it's very
16 significant. And what we have here is someone who by his
17 own fault has committed these offenses but has tremendous
18 other qualities that are worthy of consideration. He's a
19 young man, he's going to preach at the mosque, he's going
20 to talk to his congregation with others. And this is going
21 to be the sermon that he gives every year about his
22 experience with law enforcement and the consequences and
23 why people need to do the right thing. And so much more
24 than other cases it places you in a more difficult role.
25 Do you send him to prison for a long time to remind people

1 about you can't be dishonest and not give information about
2 them.

3 **THE COURT:** Why would the presence of guns in the
4 possession of the two other guys -- why was that material?
5 Was there some supposition that they would get on a plane
6 and carry a couple of guns with them and fly -- like a
7 shotgun and fly to Damascus and get off and say I'm here
8 with my .410, let me at them.

9 **MR. McCOPPIN:** Not in the discovery I received.

10 **THE COURT:** Well, I mean what's the relevance of the fact
11 that they had guns? Certainly no one is getting on an
12 airplane with a couple of shotguns and flying to the Middle
13 East and getting off and thereby engaging in military or
14 quasi-military activities, no one.

15 **MR. McCOPPIN:** Absolutely correct. And it was only -- to
16 learn about firearms. None of them were prohibited persons
17 at the time as far as I know, and so it was an otherwise
18 lawful activity. The thing that stuck with me as his
19 attorney trying to advise him was, did you know about them
20 having these discussions about going overseas and making
21 these plans and preparing to do certain things. And he
22 said, no. That's what I, as his counsel, saw as a material
23 element that the jury would likely stick on and provide as
24 a basis for his conviction.

25 And since all of this has happened a year later after

1 these other folks were arrested, the FBI and the agents
2 came back and talked to him, he acknowledged that he was
3 untruthful with them. He has been debriefed with them at
4 least twice. And I was with him for at least part of --

5 **THE COURT:** Where does this crime -- it's 1001, which can
6 apply to anything. You can say, you know, I dug a hole in
7 wetlands and lie about it. But is this part of the Patriot
8 Act or not at all affected by the Patriot Act?

9 **MR. McCOPPIN:** I don't think the 1001 is.

10 **THE COURT:** No, 1001 has been here forever.

11 **MR. McCOPPIN:** Right. The enhancements for 14 plus another
12 12, I didn't check the historical history there. But I
13 asked probation whether they could include language in the
14 pre-sentence report letting the Court know that a variance
15 downward might be appropriate. They thought that it was,
16 and they included it in the very last page.

17 **THE COURT:** Well, if it was just a false statement, you
18 know, the EPA comes to your backyard, and they say, we see
19 some cypress trees here. Uhm, this is a wetland; did you
20 dig that ditch? No. But you did dig the ditch. Would it
21 be a level six as the base offense level?

22 **MR. HARDISON:** Your Honor, that would likely fall under
23 2B1.1, which would start off with a level six.

24 **THE COURT:** And then there wouldn't be any other
25 enhancements?

1 **MR. HARDISON:** No, sir.

2 **MR. KELLHOFER:** If I may, the only enhancement would be if
3 there was a dollar amount of loss associated with it.

4 **THE COURT:** No. They wanted you to get your shovel back
5 and start backfilling that ditch and then plant some
6 wetland sensitive plants so that you would remediate the
7 terrible damage that you had done.

8 **MR. KELLHOFER:** Yes, sir.

9 **THE COURT:** Okay.

10 **MR. McCOPPIN:** Your Honor, I'm going to ask you to ask you
11 to take all that into consideration. If anyone is worthy
12 of a variance, I would suggest that Mr. Moore is.

13 **THE COURT:** It wouldn't be a variance if I found that the
14 report inaccurately calculates things and that the
15 statement is a false statement and no more than that, and
16 it was a level six, then it would be zero to six would be
17 his guideline.

18 **MR. McCOPPIN:** Your Honor, with your permission I would
19 like to add an oral objection to the pre-sentence report,
20 that the statements are not material and ask that you
21 consider sentencing him at an offense level six.

22 **THE COURT:** Yeah.

23 **MR. McCOPPIN:** Thank you.

24 **THE COURT:** I'll hear from the Government.

25 **MR. KELLHOFER:** Your Honor, I have great concern that --

1 first of all, I understand if they are not material I don't
2 understand how some people could have pled guilty to that
3 offense.

4 **THE COURT:** I can't hear you.

5 **MR. KELLHOFER:** Materiality is an element of this offense
6 to which he pled guilty and which is incorporated within
7 this plea agreement. So I have great concerns with that
8 statement. I'll move on and address I think some of your
9 concerns, however. I think at the outset it's important to
10 note what you've just heard is I think going to be in stark
11 contrast to fleshing out the facts for you. And I think
12 that fact alone is somewhat important here as to why this
13 individual needs to recognize the materiality of his lie in
14 his comment. So if I may, to support some of the concerns
15 that I've heard, I would like to go through some of the
16 facts, Your Honor.

17 This case began in early 2013 with an investigation of
18 Avin Brown. As part of that investigation, Your Honor, it
19 soon revealed that there was a strong relationship between
20 that individual, Avin Brown, another individual by the name
21 of Jordan, last name Jordan, and then the defendant, Mr.
22 Moore himself. The investigation ultimately came to -- the
23 investigation portion came to a screeching halt on 19 March
24 2014. And the reason for that was because Avin Brown
25 attempted to board a flight out of Raleigh-Durham

1 International Airport to Turkey. He had made contact with
2 an Al Qaeda fighter, an individual -- Al Qaeda affiliate,
3 I should say, ISIS, the Islamic state of Iraq and Shim,
4 otherwise known as Syria. The Government essentially --
5 its hand was forced at that time to move forward given that
6 this individual was attempting to travel, and we had a good
7 indication as to why he was attempting to travel.

8 **THE COURT:** Why was he attempting to travel?

9 **MR. KELLHOFER:** I could better answer that through the fact
10 that we had the opportunity now specifically to -- to
11 proffer with that individual Brown, and he has explicitly
12 told us why. The reason he was attempting to travel was he
13 had fallen into what I would consider the cult like
14 ideology of Al Qaeda, ISIS, otherwise international
15 terrorist groups, designated groups by the United States.
16 Insofar as what is a terrorist group. The definition is at
17 2331, Your Honor. And it specifically states that
18 international terrorism includes activities involved in
19 violent acts or acts dangerous to human life that are a
20 violation of the criminal laws of the United States, or of
21 any State, or that would be a criminal violation if
22 committed within the jurisdiction of the United States or
23 of any State; those that appear to be intended to
24 intimidate or coerce the civilian population. Utilizing
25 that, what Brown informed us is he intended along the line

1 of the ideology of these groups to begin -- to begin in
2 Syria. Syria is currently -- it still remains -- observed
3 as an opportunity for these groups. They believe that
4 they've established under the Muslim faith what's known as
5 the caliphate. Essentially it's a government that would be
6 run under Sharia law, Islamic law. Unfortunately these
7 individuals have twisted the Muslim faith, the Islam faith
8 and turned that into something that should be accomplished
9 and can be accomplished through violence. Their intent is
10 to establish this caliphate which they view as a government
11 that runs both your personal affairs as well as your
12 economical and your government affairs under that specific
13 religious law. Moreover, Syria is only a jumping point.
14 The point is to establish the caliphate there and then move
15 specifically into Lebanon and now on to the remainder of
16 the world. They view as their nemesis democracy, because
17 democracy allows for a multitude of religions. So I think
18 Congress did a good job as well in Chapter 113B, which
19 involves terrorism within federal criminal law. And
20 Congress specifically states at 2339B in the note section
21 that Findings: Congress has found that international
22 terrorism is a serious and deadly problem that threatens
23 the vital interest of the United States.

24 The Constitution confers upon Congress the power to
25 punish crimes against the law of nations and to carry out

1 the treaty obligations of the United States.

2 It goes on to say why those are great concerns. They
3 affect us, they affect our global partners. So there's a
4 host of reasons that this action of intending to go to
5 Syria, to join ISIS, to establish a caliphate, to move that
6 on to world wide domination affects the United States in a
7 great and grave manner.

8 **THE COURT:** So he's a threat to world peace?

9 **MR. KELLHOFER:** I think this individual thwarted the United
10 States in catching those individuals, absolutely, yes.

11 **THE COURT:** Good.

12 **MR. KELLHOFER:** So in this instance what did he do, the
13 materiality here that the government would need to show
14 before a jury -- and it's my understanding it is a fact for
15 the jury. At this point I think Your Honor is correct.

16 **THE COURT:** He's not being punished by the law because of
17 his beliefs or his speech?

18 **MR. KELLHOFER:** Absolutely -- absolutely not, Your Honor.

19 **THE COURT:** So he has the First Amendment freedom of
20 religion right to exercise that and he has the First
21 Amendment freedom to speak and to assemble?

22 **MR. KELLHOFER:** And, you know, insofar as this case -- I
23 think this case is an excellent example of that. And
24 here's why, Your Honor.

25 **THE COURT:** Of protecting his --

1 **MR. KELLHOFER:** Of protecting his rights, yes.

2 **THE COURT:** -- protecting his speech, assembly and
3 religious rights?

4 **MR. KELLHOFER:** I do, absolutely. And here's why. During
5 this case the Government utilized an undercover,
6 essentially, utilized other means and methods to obtain
7 evidence. And the Government ultimately concluded on that
8 day that Avin Brown was traveling -- there was sufficient
9 evidence to stop him now. And moreover he had engaged in
10 conspiracy.

11 **THE COURT:** Brown?

12 **MR. KELLHOFER:** The conspiracy that is essentially a speech
13 crime to some extent, if you will.

14 **THE COURT:** But the other guy, the guy that was going to
15 Syria, not this guy?

16 **MR. KELLHOFER:** Correct. Avin Brown and another
17 individual, Jordan.

18 **THE COURT:** This guy is not a conspirator?

19 **MR. KELLHOFER:** No. We didn't charge him as a conspirator.
20 And I think that's what goes back to point that this
21 individual, we had a plethora of evidence of his mindset,
22 of his belief that those --

23 **THE COURT:** Of this gentleman's belief?

24 **MR. KELLHOFER:** Of this gentleman right here.

25 **THE COURT:** You can't commit a crime by belief.

1 **MR. KELLHOFER:** Correct. And that is why he was not
2 charged in that conspiracy. And I think that's why this is
3 an excellent example of protecting those rights for him.
4 The Government made that decision, you know what, he had
5 those beliefs but he was not acting on them like Avin Brown
6 had by traveling. And the plan between the two of them
7 specifically was Avin Brown would get over there and then
8 essentially make contact.

9 **THE COURT:** He wasn't Mirandized because he wasn't in
10 custody, correct?

11 **MR. KELLHOFER:** Who are we speaking of, Avin Brown?

12 **THE COURT:** This gentleman.

13 **MR. KELLHOFER:** Yeah, absolutely. He was not in custody.

14 **THE COURT:** So he was interviewed but not Mirandized?

15 **MR. KELLHOFER:** Correct.

16 **THE COURT:** But technically he wasn't in custody, so he was
17 not advised that a statement that was untrue that the agent
18 considered to be material would be actionable?

19 **MR. KELLHOFER:** Actually, the Government took that step and
20 said you know what, we are going to specifically inform you
21 of that. He was specifically told, anything you tell us,
22 if you lie to us, that's a federal offense. As a matter of
23 fact, at the end of the interview if there's anything you
24 said that you want to change, take back, add, please do so
25 now. He did not. So he was advised.

1 **THE COURT:** Where was he interviewed?

2 **MR. KELLHOFER:** The interview took place in Kentucky at --
3 if I may ask the agent here. I want to say I believe it
4 was his father's home, Your Honor. I'm not sure. It was a
5 personal residence where he was located at the time in
6 Kentucky at that moment.

7 **THE COURT:** And who did the interview?

8 **MR. KELLHOFER:** The interview was by FBI agents, Your
9 Honor.

10 **THE COURT:** Special Agents?

11 **MR. KELLHOFER:** Yes. Two Special Agents that were out of
12 that office located there, yes. And, like I said, they
13 sort of had to act quickly given that one individual had
14 traveled. We knew that Mr. Moore had these beliefs, that
15 he had contact --

16 **THE COURT:** So this was the day before you were going to
17 arrest the other people?

18 **MR. KELLHOFER:** The day of the arrest, Your Honor.

19 **THE COURT:** The day of the arrest?

20 **MR. KELLHOFER:** Yes. So what I would like to highlight for
21 you is that --

22 **THE COURT:** You had made a commitment to arrest the other
23 people, hadn't you, irrespective of his input?

24 **MR. KELLHOFER:** Oh, absolutely, yeah. Absolutely. Given
25 the travel that was taking place, certainly. I think

1 insofar as where we were and what was going on with this
2 individual and where we decided to act, I think there was
3 some --

4 **THE COURT:** Why did you interview him if you had already
5 made a commitment to arrest the other people?

6 **MR. KELLHOFER:** Why did we interview him?

7 **THE COURT:** Yes.

8 **MR. KELLHOFER:** Hopefully to obtain -- at that time the gig
9 is up and we're no longer covert and anyone associated with
10 that individual whom we believe had that mindset and intent
11 it was our belief that we had better act now.

12 **THE COURT:** And this is not entrapment?

13 **MR. KELLHOFER:** No, absolutely not.

14 **THE COURT:** How come?

15 **MR. KELLHOFER:** Well, I think entrapment for one, the
16 Government is the individual who establishes the
17 opportunity, the crime mindset. In this instance this
18 individual was in contact with other individuals prior to
19 being in contact with our source. So in our view -- but
20 that would actually not even go towards the lie. I don't
21 even -- I'm not even entirely sure how you would trap
22 someone to lie. I would have to think that one through,
23 Your Honor. But here, here's some interesting facts, Your
24 Honor. So on 11 October 2013 there's a recording, and Mr.
25 Moore states, we've got to organize ourselves. The group

1 at that point appoints Mr. Moore as the spiritual leader.
2 They appoint Brown, the individual who traveled and had
3 contacts overseas, they appoint him as the international
4 relations, in charge of international relations. They
5 appoint Jordan, who is a pretty buff guy as the physical
6 fitness -- handling physical fitness. And then they
7 appoint the CHS as the Board of Transportation because he
8 had a car. Towards the end of the conversation Moore
9 affirms that even this results in a horrible death and he
10 dies tomorrow that he would go to heaven. On 22 October,
11 shortly later, there's again another meeting and Moore
12 states that he wants to make sure to get into good enough
13 shape so he can put his hands through the chest of a kafir,
14 a non-Muslim. And this is where it takes us into -- we
15 have these beliefs, but do have the action. Now on 23
16 October, just a day later, Moore then meets with the CHS
17 and Jordan and during that recording there's a discussion
18 about the meaning of an Arabic term Hijra. And it's often
19 utilized from my experience, Your Honor, in these cases
20 covertly as attempting to get to jihad. And so they're
21 discussing actually Hijra and in truth just as a pilgrimage
22 that is taken by Muslims. But he, Moore, is explaining to
23 Jordan what the term means and he states, well, it actually
24 means migration but Moore states but the reason we're going
25 is jihad. And then he states I'm not at that point now.

1 So this is why I say the evidence displays the mindset but
2 we -- to be perfectly honest at this point, in our view, it
3 was wishy-washy. And it simply wasn't enough to move
4 forward on the conspiracy charge. So he was interviewed.
5 During that interview he denied that he ever entertained
6 any discussions with anyone wanting to wage jihad. He
7 stated that he had never talked with Brown in a
8 conversation even peripherally discussing anyone overseas,
9 killing anyone overseas, waging violent jihad or traveling
10 for that purpose. He stated he had not participated in any
11 group where he had been a member for that purpose. He
12 stated that he had never heard Brown or Jordan discussing
13 violent jihad or travel. He then went on to flesh that out
14 and say, well, on the other hand he had heard Brown talk
15 about going to Yemmen just to get a bride. He stated that
16 he never engaged in any activity involving weapons with
17 Jordan when in truth he had been in Jordan's home and had
18 been shown how to take apart an assault rifle. As a matter
19 of fact, rather than just say, no, he said, well, you know,
20 at Jordan's house I had seen a sword. That's all. He
21 denied that he had ever entertained any discussions of this
22 matter. So I think it was a multitude of lies when he had
23 spent a substantial amount of time with these individuals.
24 Brown -- when Brown proffered with us after having pled
25 guilty after a number of months, or after a brief speak

1 with us after a number of months, he stated that he had a
2 number of discussions with Moore, with Moore present, that
3 Moore would have them take out the batteries of their cell
4 phones because eagle eyes were listening, referring to the
5 Federal Government. He stated that during this time they
6 had spoke often of going overseas for jihad and used the
7 term fisabilillah. I'm probably pronouncing that
8 incorrect. It's f-i-s-a-b-i-l-i-l-l-a-h. But it was a
9 covert method of basically saying going overseas for this
10 violent purpose, for what they term, their word, jihad.
11 They were speaking code because they knew that they would
12 get arrested if they were caught doing this. And that Mr.
13 Moore was aware that they were seeking passports at the
14 time as well for this purpose. These things additionally
15 later on, as Mr. Moore stated, he did tell us when he spoke
16 to us as well. Jordan additionally proffered and stated as
17 much, the same things. Now with regard to Brown he did
18 specifically say that there had been a point where they had
19 sort of broken apart, that Mr. Moore had, in fact,
20 withdrawn from them. And the reason for this, according to
21 Mr. Brown, was that Brown believed that this going
22 overseas, this joining in this, this establishing this
23 caliphate, this engaging in violence and by violence, I
24 mean warfare, to establish this. That doing this was
25 obligatory upon every Muslim. That was Brown. And that

1 Mr. Moore felt that while it was a good thing it was not
2 obligatory to fight. And so they had a falling out, if you
3 will. And Mr. Moore then began to sort of separate
4 himself. Jordan states that he was -- Jordan himself was
5 just so blunt about things that he actually feared that --
6 he believed that Moore had sort of separated himself
7 because Moore made him believe that Jordan was in fact an
8 informant, because Jordan was apparently so blunt about
9 things and Moore was much more of a careful individual,
10 take the batteries out of phones and things like that.

11 So when it's portrayed, Your Honor, as, hey, did you
12 know these guys, you know, talked anything about going
13 overseas or jihad stuff, no, I didn't know that. That's a
14 little different. After this individual lied to us,
15 thwarted our efforts. And when I say -- I say thwarted our
16 efforts, because these individuals fortunately did not go
17 to trial. So I can't tell you what any one piece of
18 evidence that he had had he been an honest individual and a
19 witness for us would have meant. I submit that it
20 certainly would have been material to have a non-government
21 insider who heard these things, the things that he
22 subsequently was honest and told us. Yeah, that is
23 absolutely material. And it would have been material had
24 this gone to trial. Moreover, I believe it absolutely
25 would have been material to these individuals pleading much

1 earlier when in fact there was substantial litigation
2 involving classified matters, involving a whole host of
3 motions that took place that I think to some degree would
4 have had an effect on those other defendants had they known
5 Mr. Moore was testifying against them.

6 So all in all, Your Honor, I want to step back however
7 and say, thank God, that Allah, however you want to put it,
8 this individual did withdraw from that mindset. And I
9 applaud that. I think that takes great strength of
10 character to step away from that. However, during this
11 period of time he was wholeheartedly within it, was not
12 somebody who appeared to be a new Muslim just getting some
13 bad advise, rather was advising, lied to the Government and
14 chose not to be open and honest and help and assist the
15 Government. However, once confronted -- and I say he was
16 again interviewed approximately a year later after
17 essentially we had been able to secure plea agreements from
18 the other individuals, and we had been able to proffer with
19 those individuals. At the completion of those proffers,
20 approximately four months later, Mr. Moore was again
21 approached. He again continued his lies. He was then
22 shown, hey, here's an audio recording. When he was
23 presented with the evidence he did a 180 degree turn and I
24 think that at that point recognized it. Many individuals
25 wouldn't. And he was at that point then honest. He then

1 subsequently pled guilty to an information, which was of
2 great assistance to the Government. I believe that was a
3 help, and I believe that that shows his mindset in trying
4 to right wrongs to some degree. He did proffer with the
5 Government. He did not rise to the level of a 5K. It was
6 information already known to the Government. But I think
7 of note overall, Your Honor, it is the Government's
8 position that the guidelines -- they're only guideposts; we
9 recognize that. 3553 is truly, I think, the most
10 applicable and insofar as punishment being appropriate,
11 insofar as establishing the respect for the law and that
12 this individual recognize that fully. And that those who
13 see what occurs recognize that fully. I think that of
14 great value. And I think the guidelines at least to some
15 degree reflect that. We do believe that the guidelines are
16 appropriate. Insofar as a recommendation, Your Honor, I
17 think that the guideline range is where Your Honor should
18 fall. I recognize what he has done though, however; our
19 recommendation, therefore, would be at the bottom end of
20 the guideline range, I believe 46 months, Your Honor.

21 **THE COURT:** What happened, if anything, to the two men,
22 Jordan and Brown? Have they been sentenced?

23 **MR. KELLHOFER:** They have not been sentenced, Your Honor.
24 Their sentencings have been -- have been prolonged for a
25 period of time. They actually --

1 **THE COURT:** Are they connected to this case? Are they in
2 front of Judge Flanagan?

3 **MR. KELLHOFER:** Yes, Your Honor.

4 **THE COURT:** Okay. Are they ready for sentencing?

5 **MR. KELLHOFER:** No. I would rather not get into the
6 reasons for it.

7 **THE COURT:** No, that's fine. They don't have pre-sentence
8 reports that are awaiting a scheduling date?

9 **MR. KELLHOFER:** No. They've been pushed off until January,
10 Your Honor.

11 **THE COURT:** Okay. Okay.

12 **MR. KELLHOFER:** If Your Honor has no further questions.

13 **THE COURT:** No, I don't have any other questions.

14 **MR. KELLHOFER:** Thank you, sir.

15 **MR. McCOPPIN:** May I, Your Honor?

16 **THE COURT:** Yes.

17 **MR. McCOPPIN:** You asked the Government, why did you go
18 interview this man when you already knew you were going to
19 arrest those other two people. My professional opinion --
20 I've been coming to this courthouse for the last 20 some
21 years -- is that they were trying to solicit a lie.
22 Because they didn't have the factual basis to charge him
23 with anything else, but the Government believed he could be
24 culpable for these beliefs or discussions not rising to
25 conspiracy and that if he was untruthful that would be a

1 way that the Government could charge him with a 1001
2 violation and still pursue him. I don't know that to be
3 the case, and I don't speak for the Government. But my
4 professional opinion is -- and they already know they're
5 going to get the other two guys -- and they confront him
6 with these questions, and they, yes, identify themselves as
7 FBI agents but don't say lying to us is a federal offense
8 until after he has answered the questions and only at the
9 end of the interview, do you want to tell us or change any
10 of your statements because lying to us is a federal
11 offense. At that point he didn't change anything. He made
12 a false statement. And so to their credit to whatever
13 extent appropriate the federal agents did advise him at the
14 end of that conversation in 2014. But this non-conspiracy
15 mindset discussion that we're talking about, according to
16 the other two people, he withdrew from. And the statements
17 that the Government refers to are back in October of 2013,
18 approximately six months before the gentleman was about to
19 fly overseas. So whatever mindset the three of them had,
20 Mr. Moore clearly had withdrawn from it. I would ask you
21 to consider a probationary sentence.

22 **THE COURT:** We'll take a brief recess.

23 (Court recess 3:10 - 3:20 p.m.)

24 **THE COURT:** I've considered all the arguments and the pre-
25 sentence report and the statement of the Defendant and the

1 factual basis for the plea. While the report was accepted
2 establishing a Level 23, Category I as the guideline, it
3 could also in the alternative be as low as a Level 6 for
4 false statement to the Government agency and with a two-
5 level reduction would be a Level 4, Category I, which would
6 be a zero to six range. So I have -- those are the two
7 extremes within which the Court could find guidance in a
8 guideline. And under 3553(a), it doesn't appear to me,
9 based on the offense that a custodial sentence would be
10 necessary. And I think that a sentence of probation with
11 community service would reflect the seriousness of the
12 offense of making a false statement, but also promote
13 respect for the law. That there doesn't appear to be any
14 need to protect the public from further crimes of the
15 defendant as the defendant has disavowed any militant
16 behavior or attitude or future. And I think that under the
17 fourth provision, providing for the defendant's vocational
18 training and educational training that a custodial sentence
19 would not be appropriate. And I think that this sentence
20 will send a sufficient message to protect the public from
21 further crimes. So I will sentence the defendant to three
22 years of probation on the condition that he perform 250
23 hours of community service and not violate any federal,
24 state or local law, not associate with any person involved
25 in any military or militant action that would be a threat

1 to peace or to the United States and not otherwise violate
2 any federal, state or local law. And pay a special
3 assessment of \$100.00.

4 And either side can appeal that. That's all.
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STATE OF NORTH CAROLINA)
) C-E-R-T-I-F-I-C-A-T-I-O-N
COUNTY OF PERQUIMANS)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

<u><i>Sandra A. Graham, CVR-M</i></u>	<u><i>10/28/2015</i></u>
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